

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

ANDREW C. LIVINGSTON, #2209959

VS.

TERRY GILBERT, ET AL.

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CIVIL ACTION NO. 4:20cv522

**MEMORANDUM ADOPTING REPORT AND
RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE**

Came on for consideration the Report and Recommendation of the United States Magistrate Judge in this action (the “Report”) (Dkt. #74), this matter having been heretofore referred to the Magistrate Judge pursuant to 28 U.S.C. § 636. On August 22, 2023, the Magistrate Judge entered the Report (Dkt. #74), containing proposed findings of fact and recommendations that Defendants’ motions to dismiss (Dkt. ##35, 66) be granted. Specifically, the Magistrate Judge recommended the following: (1) Plaintiff’s allegations do not demonstrate that the limitations period should be equitably tolled; thus, any claim based on events occurring before June 11, 2018, is time-barred and should be dismissed; (2) Plaintiff’s claims against Defendants lack the requisite specificity and factual context to state a claim and should be dismissed with prejudice for failure to state a claim for which relief can be granted; (3) Plaintiff’s allegations do not state viable constitutional violations; (4) to the extent Plaintiff’s § 1983 claims rest on allegations that necessarily imply the invalidity of Plaintiff’s conviction, the claims should be dismissed with prejudice until he can show he satisfies the conditions set forth in *Heck*; (5) Plaintiff’s request for injunctive relief is moot; and (5) the dismissal should count as a strike pursuant to 28 U.S.C. § 1915(g). Plaintiff filed objections. (Dkt. #81).

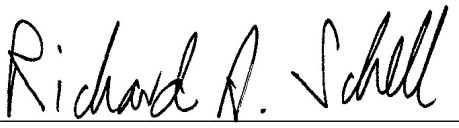
In the objections, Plaintiff continues to urge that he is entitled to equitable tolling and to a *Spears* hearing. The court has reviewed the tendered objections, and they generally add nothing

new to Plaintiff's prior arguments in this case. Despite his arguments, Plaintiff fails to show that the Report is in error or that he is entitled to equitable tolling or to a *Spears* hearing. Plaintiff's objections to the Report are without merit.

The Report of the Magistrate Judge, which contains proposed findings of fact and recommendations for the disposition of such action, has been presented for consideration. Having made a *de novo* review of the objections raised by Plaintiff to the Report, the court concludes that the findings and conclusions of the Magistrate Judge are correct. Therefore, the court hereby adopts the findings and conclusions of the Magistrate Judge as the findings and conclusions of the court.

It is therefore **ORDERED** that Defendants' motions to dismiss (Dkt. ##35, 66) are **GRANTED**. Plaintiff's claims against Defendants are **DISMISSED WITH PREJUDICE**; this dismissal counts as a strike pursuant to 28 U.S.C. § 1915(g); and the Clerk of Court is directed to **CLOSE** this civil action. It is further **ORDERED** that all motions not previously ruled on are hereby **DENIED**.

SIGNED this the 8th day of February, 2024.



RICHARD A. SCHELL
UNITED STATES DISTRICT JUDGE